

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHARLES J. SAIN,

Plaintiff,

vs.

No. CIV 08-1019 RB/LFG

**CAROLYN M. SNYDER, MARY E.
CHAPPELLE, L. HELEN BENNETT,
RICHARD STOOPS, PATRICIA
MADRID, GARY KING, BETSY
SALCEDO, STANLEY WHITAKER,
DEBORAH DAVIS WALKER, WILLIAM
F. LANG, JUANITA DURAN, LYNN
PICKARD, JAMES J. WECHSLER,
MICHAEL VIGIL, MICHAEL D.
BUSTAMANTE, A. JOSEPH ALARID,
EDWARD L. CHAVEZ, PETRA JIMENEZ
MAEZ, RICHARD C. BOSSON, BILL
RICHARDSON, BERNALILLO COUNTY
SHERIFF'S DEPARTMENT, ERNESTO J.
ROMERO, RODERICK KENNEDY, CHARLES
W. DANIELS, PATRICIO M. SERNA, ELIZABETH
E. WHITEFIELD, VICKI AIKENHEAD RUIZ and
JO ANNE DE HERRERA,**

Defendants.

ORDER DENYING PLAINTIFF'S OBJECTION TO ORDER DENYING OBJECTION

THIS MATTER comes before the Court on pro se Plaintiff Charles J. Sain's Objection to Order Denying Objection, filed July 27, 2009 (Doc. 232). In this document, Mr. Sain seeks reconsideration of the Court's denial of his Motion for Relief from Judgment, herein construed as a Rule 60(b) motion. As the Court noted in the Order Denying Motion for Reconsideration (Doc. 225), the filing of a notice of appeal generally divests the district court of jurisdiction over aspects of the case involved in the appeal. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Therefore, this Court lacks jurisdiction to grant relief under Rule 60(b) due to the

pending appeal. *Id.*

At the same time, the Court recognizes that it has jurisdiction to entertain and deny the Motion for Relief from Judgment. Notably, a district court is free to consider a Rule 60(b) motion and either deny the motion on the merits or notify the Tenth Circuit that the Court would grant the motion upon proper remand. *Aldrich Enters., Inc. v. United States*, 938 F.2d 1134, 1143 (10th Cir. 1991). For this reason, the Court considered the arguments advanced by Mr. Sain in the Motion for Relief from Judgment and found them to be without merit.

It bears underscoring that Rule 60(b) is not a tool to rehash previously-presented arguments already considered and rejected by the Court, nor does it provide a vehicle to present new arguments based upon law or facts that existed at the time of the original argument. *FDIC v. United Pacific Ins. Co.*, 152 F.3d 1266, 1272 (10th Cir. 1998); *Van Skiver v. United States*, 952 F.2d 1241, 1243-44 (10th Cir. 1991). Whether to grant a Rule 60(b) motion rests within the district court's discretion. *See Beugler v. Burlington N. & Santa Fe Ry. Co.*, 490 F.3d 1224, 1229 (10th Cir. 2007). The arguments presented by Mr. Sain in the Motion for Relief from Judgment seek to re-litigate the legal issues on which the Court relied in the Memorandum Opinion and Order of May 13, 2009. To the extent Mr. Sain presents new arguments, the Court finds such arguments to be unfounded. For these reasons, the Motion for Relief from Judgment has been denied. The Court's prior rulings stand.

Mr. Sain has continued his pattern of filing redundant and increasingly obstreperous documents and he is instructed that he is not to file any further motions or documents in this case because jurisdiction over it is now with the Tenth Circuit Court of Appeals. Any further frivolous filings may result in the imposition of monetary sanctions for contempt of this Order. Additionally, Mr. Sain's documents filed of record contain scandalous allegations that offend the dignity of this Court. Mr. Sain is admonished that the filing of any document containing derogatory comments

concerning this Court may result in serious sanctions against him for contempt of Court.

WHEREFORE,

IT IS ORDERED that Mr. Sain's Objection to Order Denying Objection (Doc. 232) is **DENIED.**

IT IS FURTHER ORDERED that the filing of any document containing frivolous arguments or derogatory comments concerning this Court may result in serious sanctions against Mr. Sain.



ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE